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September 28, 2010

The Honorable Leonard D. Wexler
United States District Court
Eastern District of New York
Long Island Federal Courthouse
944 Federal Plaza
Central Islip, New York 11722

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CHAMBERS OF
JUDGE WEXLER

RE: **Gravina et al v. United Collection Bureau, Inc. et al**
Case No.: 2:09-cv-04816-LDW-AKT

Dear Judge Wexler,

First, let me just state that I am not an attorney, nor do I believe that I am a member of the subject class for the referenced case. I am simply a regular citizen, with enormous respect for our courts system; who feels concern and even outrage when I see our judicial systems and courts misused.

For many years I have seen the growth of an almost *cottage industry* of what I would characterize as frivolous consumer class action law suits.

I have been a totally passive and involuntary class member of many such actions over the years. Several I recall quite well:

- There was the GE light bulb action, alleging that consumers who purchased GE long-life light bulbs were deprived of "lumens" of light without adequate disclosure.
- Then there was the scouring pad action, alleging that Brillo and SOS conspired in unfair marketing schemes in the northeast US.
- Then, my favorite was the Compaq computer monitor action alleging that a nominally-described 15" monitor was not actually 15 inches in size. Imagine all the computer geeks being confused on this detail!

(This one actually led me to fancifully consider my own action against the US lumber industry; since a commonly-called "2x4" board is not actually 2 inches by 4 inches in its finished dimensions!!)

All of these actions were settled according to the proposed terms, and the consumer class members all received (or were offered) dollars or cents-off coupons in compensation – with which they could purchase more light bulbs, scouring pads, or computer monitors.

As I watched these and many, many similar actions emerge over the years, I came to three conclusions:

- These were brilliant initiatives on the part of the plaintiff law firms, resulting in the award of millions of dollars in legal fees.
- These were also a win/win for the defendant companies providing a relatively low-cost settlement for the alleged actions, and a tremendous and well-publicized marketing program via the coupon offerings to sell more products.
- And, finally, I concluded that such suits were, in my opinion, an offensive assault on the integrity of our legal and courts system. They utilized these institutions for what I essentially believe to be get-rich-quick schemes for the plaintiff attorneys and an equally attractive marketing scheme and/or other liability-evasion techniques for the defendant firms.

Now comes the subject action; a proposed settlement statement of which was published in USAToday on September 20, 2010.

This is an even more bizarre example. The proposed settlement involves supposedly over two million members of the defined class who had messages left on their telephone answering machines by the defendant firm.

Briefly, the proposed settlement (per the published notice) is as follows:

Named Plaintiff Joann Gravina	\$2,500.00
Named Plaintiff Anthony Felix	\$3,500.00
Cy pres payment by Defendant to one or more un-named charities	\$26,508.02
Plaintiff Attorney Fees	\$90,000.00

I note that the next procedural action is scheduled for November 9, 2010 before you at 10:00 AM. This is referenced as the "Fairness Hearing". I'm sure that this term and procedural element has very specific legal definitions and procedures. But it also has a very clear *common sense* definition: "Is this *fair*?"

In answering the, "Is this *fair*?" question, I ask you to consider the following:

- If the Plaintiffs in this case (both named and class) were truly harmed and damaged, let them be justly and *fairly* compensated for their damages. That would be *fair*.
Why deprive two million class members of any rightful remedy in exchange for *absolutely nothing* under the proposed settlement? Is that *fair*?
- If the Defendant in this case truly did some tortuous acts or otherwise violated some regulatory or criminal statutes; let them be pursued civilly in a more responsible manner, or prosecuted under appropriate criminal or regulatory prosecutions to fullest extent of the law. That would be *fair*.

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- If, however, there's some logic to a class action settlement, how is it *fair* for the Plaintiff attorneys to essentially "recruit" a 2 million member class, and then agree to a settlement on their behalf whereby the Plaintiff attorney receives 3 times the total amount to be paid by the Defendant; and *15 times* the total compensation paid to actual members of the class?
- Finally, if this action and proposed settlement is essentially another "wink and a nod" agreement between the Defendant and Plaintiff attorneys essentially conspiring to "recruit" a member class and then reach a mutually beneficial and rewarding settlement, then I would suggest that you dismiss this action and just send all the parties to this action on their way to pursue other available remedies. That would be *most fair*.


Finally, speaking of *fairness*, how *fair* is it to burden the Federal courts with these types of frivolous actions in the first place?

In my opinion, use of the Federal courts for such frivolous and self-serving matters is not *fair* to our Federal courts system and the jurists and staff who work tirelessly to fulfill their missions. Nor is it *fair* to the citizenry who depend on access to these judicial venues for much more significant matters; or the US taxpayers who fund these cherished institutions.

I urge you to use this case to send a message to the legal community. Possibly, you will ultimately need legislative help with this issue; but perhaps you and your fellow jurists could start by sending some clear signals to the legal community that this abusive and self-serving use of the Federal courts will not be tolerated.

Thank you for entertaining my thoughts and concerns.

Sincerely,



Edward M. Ruane